Customs Bulletin

Regulations, Rulings, Decisions, and Notices concerning Customs and related matters

and Decisions

of the United States Court of Customs and Patent Appeals and the United States Customs Court

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This issue contains

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THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

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U.S. Customs Service

Treasury Decisions

(*T.D. 77-188*)

Antidumping—Cast Iron Soil Pipe from Poland

The Secretary of the Treasury makes public a revocation of the finding of dumping with respect to cast iron soil pipe from Poland; Section 153.46, Customs Regulations, amended

DEPARTMENT OF THE TREASURY,
Washington, D.C.

TITLE 19—CUSTOMS DUTIES

CHAPTER 1—UNITED STATES CUSTOMS SERVICE

PART 153 – ANTIDUMPING

AGENCY: United States Treasury Department

ACTION: Revocation of a Finding of Dumping

SUMMARY: This notice is to inform the public that cast iron soil pipe from Poland is no longer being sold at less than fair value under the Antidumping Act, 1921. Sales at less than fair value generally occur when the price of merchandise sold for exportation to the United States is less than the price of such or similar merchandise sold in the home market or third countries. As a result of this action, shipments of this merchandise which were entered or withdrawn from warehouse, for consumption on or after February 10, 1977, will not be liable for special dumping duties.

EFFECTIVE DATE: February 10, 1977

FOR FURTHER INFORMATION CONTACT: Mr. William T. Trujillo, Duty Assessment Division, United States Customs Service, 1301 Constitution Avenue, N.W., Washington, D.C. 20229 (202-566-5492).

On November 2, 1967, a finding of dumping with respect to cast iron soil pipe from Poland was published in the FEDERAL REGISTER as T.D. 67–252 (32 FR 15155). A "Notice of Tentative Determination to Modify or Revoke Dumping Finding" applicable to this merchandise was published in the FEDERAL REGISTER of February 10, 1977 (42 FR 8446–7).

Reasons for the tentative determination were published in the above-mentioned notice, and interested persons were afforded an opportunity to provide written submissions or request the opportunity to present oral views in connection therewith.

No written submissions or requests having been received, I hereby determine that, for the reasons stated in the "Notice of Tentative Determination to Modify or Revoke Dumping Finding," cast iron soil pipe from Poland is no longer being, nor is likely to be, sold in the United States at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 *et seq.*), and the above-mentioned finding of dumping is hereby revoked.

Accordingly, section 153.46 of the Customs Regulations (19 CFR 153.46) is hereby amended by deleting from the column headed "*Merchandise*," the words "Cast Iron Soil Pipe," from the column headed "*Country*," the word "Poland," and from the column headed "T.D.," reference to T.D. 67–252.

This notice is published pursuant to section 153.44(d) of the Customs Regulations (19 CFR 153.44(d)).

(Sec. 201, 407, 42 Stat. 11, as amended, 18; 19 U.S.C. 160, 173).

Dated July 21, 1977:

HENRY C. STOCKELL, JR.,
Acting General Counsel of the Treasury.

[Published in the FEDERAL REGISTER July 27, 1977 (42 FR 38176)]
[Correction published August 3, 1977 (42 FR 39200)]

(T.D. 77–189)

Foreign Currencies—Daily Rates for Countries Not on Quarterly List

Rates of exchange certified to the Secretary of the Treasury by the Federal Reserve Bank of New York for the Hong Kong dollar, Iran rial, Philippine peso, Singapore dollar, Thailand baht (tical)

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., July 20, 1977.

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates in U.S. dollars for the dates and foreign currencies shown below. These rates of exchange are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Hong Kong dollar:	
July 11, 1977	$0.2147
July 12, 1977	.2150
July 13, 1977	.2146
July 15, 1977	.2140
Iran rial:	
July 11, 1977	$0.0141
July 12, 1977	.0141
July 13, 1977	.0141
July 15, 1977	.0140
Philippines peso:	
July 11, 1977	$0.1340
July 12, 1977	.1340
July 13, 1977	.1340
July 15, 1977	.1350
Singapore dollar:	
July 11, 1977	$0.4056
July 12, 1977	.4055
July 13, 1977	.4056
July 15, 1977	.4055
Thailand baht (tical):	
July 11–15, 1977	$0.0490

(LIQ-3)

BEN L. IRVIN,
for JOHN B. O'LOUGHLIN,
Director,
Duty Assessment Division.

(T.D. 77-190)

Reimbursable Services—Excess Cost of Preclearance Operations

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., July 21, 1977.

Notice is hereby given that pursuant to section 24.18(d), Customs Regulations (19 CFR 24.18(d)), the biweekly reimbursable excess costs for each preclearance installation are determined to be as set forth below and will be effective with the pay period beginning August 14, 1977.

Installation	*Biweekly excess cost*
Montreal, Canada	$14,922.00
Toronto, Canada	24,183.00
Kindley Field, Bermuda	5,761.00
Nassau, Bahama Islands	11,041.00
Vancouver, Canada	7,374.00
Winnipeg, Canada	1,335.00

(FIS-9-05)

JOHN A. HURLEY,
Assistant Commissioner,
Administration.

(T.D. 77-191)

Foreign Currencies—Certification of Rates

Rates of exchange certified to the Secretary of the Treasury by the Federal Reserve Bank of New York

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., July 20, 1977.

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified the following rates of exchange which varied by 5 per centum or more from the quarterly rate published in Treasury Decision 77-178 for the following country. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs

purposes to convert such currency into currency of the United States, conversion shall be at the following rates:

Spain peseta:	
July 12, 1977	$0.011474
July 13, 1977	.011527
July 15, 1977	.011529

(LIQ-3)

BEN L. IRVIN,
for JOHN B. O'LOUGHLIN,
Director,
Duty Assessment Division.

(T.D. 77-192)

Synopses of drawback decisions

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., July 18, 1977.

The following are synopses of drawback rates and amendments issued December 6, 1976, to June 13, 1977, inclusive, pursuant to sections 22.1 and 22.5, inclusive, Customs Regulations.

In the synopses below are listed, for each drawback rate or amendment approved under section 1313(b), the name of the company, the specified articles on which drawback is authorized, the merchandise which will be used to manufacture or produce these articles, the factories where the work will be accomplished, the date the statement was signed, the basis for determining payment, the effective dates of exportation, the Regional Commissioner to whom the rate was forwarded, and the date on which it was forwarded.

(DRA-1-09)

D. W. LEWIS,
for LEONARD LEHMAN,
Assistant Commissioner,
Regulations and Rulings.

(A) Company: Alloy Industries, Inc.
Articles: Titanium and titanium alloy rod, wire, and bar
Merchandise: Titanium and titanium alloy hot rolled coil

Factory: Garden Grove, CA
Statement signed: April 18, 1977
Basis of claim: Used in
Effective date: February 13, 1974
Rate forwarded to RC of Customs: Chicago, May 2, 1977

(B) Company: Beecham Inc.
Articles: Sodium cloxacillin bulk powder; bulk powder sterile; premix bulk. Sodium cloxacillin capsules and injectables
Merchandise: Potassium penicillin G (U.S.P. XVIII); chlorazole chloride (3-(0-chlorophenyl)-5-methylisoxazole (or—azolyl)-4-carbonyl chloride)
Factory: Piscataway, NJ
Statement signed: March 9, 1977
Basis of claim: Bulk powders—used in; capsules and injectables—appearing in
Effective date: September 16, 1976
Rate forwarded to RC of Customs: New York, April 14, 1977

(C) Company: Charms Co.
Articles: Confectionery
Merchandise: Hard or liquid refined sugar
Factories: Freehold, NJ, and Covington, TN
Statement signed: November 3, 1976
Basis of claim: Used in
Effective date: April 1, 1973 for Covington, TN; November 1, 1974 for Freehold, NJ
Amendment issued by RC of Customs: San Francisco, December 8, 1976
Amends: T.D. 72–338–B to cover factory location change to Freehold, NJ and new Covington, TN factory.

(D) Company: Charter International Oil Co.
Articles: Petroleum products
Merchandise: Crude petroleum or petroleum derivatives
Refinery: Houston, TX
Statement signed: April 1, 1977
Basis of claim: As provided in the drawback rate contained in section 22.6(g–1) of the Customs Regulations
Effective date: January 1, 1975
Rate forwarded to RC of Customs: Houston, April 22, 1977
Revokes: T.D. 66–214(1), as amended, superseded

239-680—77——2

(E) Company: Edwin Cooper, Inc.
Articles: Oil detergents/dispersants (Hitec E–0631 *et al*)
Merchandise: Barium hydroxide monohydrate; and barium hydroxide octahydrate
Factory: Sauget, IL
Statement signed: December 24, 1976
Basis of claim: Used in
Effective date: July 7, 1974
Rate forwarded to RC's of Customs: New York and Chicago, April 13, 1977
Revokes: T.D. 77–102–C, superseded

(F) Company: Copeland Corp. (aka Copeland)
Articles: Air conditioning compressors; condensing units and parts; and refrigeration compressors
Merchandise: Iron castings, as per company specifications, including SAE designations
Factories: Sidney, West Union, and Fostoria, OH
Statement signed: March 22, 1977
Basis of claim: Appearing in
Effective date: January 4, 1974
Rate forwarded to RC of Customs: Baltimore, June 13, 1977
Revokes: Ruling of April 27, 1977, superseded

(G) Company: Crystal Chemical Co.
Articles: 3,4–dichloroaniline
Merchandise: Propanil (dichloropropionanilide)
Factory: Houston, TX
Statement signed: March 23, 1977
Basis of claim: Used in
Effective date: May 1976
Rate forwarded to RC of Customs: Houston, May 4, 1977

(H) Company: Dataproducts Corp., Dataribbon Div.
Articles: Inked printer ribbons
Merchandise: Nylon fabric (nylon taffeta, 4 and 5 mil; 1 inch to 17½ inches width)
Factory: Chatsworth, CA
Statement signed: April 5, 1977
Basis of claim: Used in
Effective date: September 16, 1975
Rate forwarded to RC of Customs: Los Angeles, April 27, 1977
Revokes: T.D. 77–29–G, superseded

(I) Company: Dr. Pepper Co.
Articles: Still or carbonated beverages
Merchandise: Liquid invert refined sugar
Factory: Dallas, TX
Statement signed: April 11, 1977
Basis of claim: Used in
Effective date: March 4, 1977
Rate forwarded to RC of Customs: San Francisco, April 26, 1977

(J) Company: E.I. du Pont de Nemours and Co.
Articles: Coated and uncoated polyester film
Merchandise: Unslit and/or pre-slit unfinished polyester film
Factories: Circleville, OH; Florence, SC; and Richmond, VA
Statement signed: March 7, 1977
Basis of claim: Appearing in
Effective date: May 18, 1976
Amendment forwarded to RC of Customs: Baltimore, April 13, 1977
Amends: T.D. 68–297–J to cover Richmond, VA, factory, and to change the basis of claim from schedule to abstract of the manufacturing records

(K) Company: Eastman Kodak Co.
Articles: Sensitized, unexposed photographic film and paper in various sizes.
Merchandise: Film emulsion, wide-roll film and paper
Factories: Rochester, NY, and Windsor, CO
Statement signed: December 6, 1976
Basis of claim: Used in
Effective date: January 1, 1973
Amendment issued by RC of Customs: Boston, December 16, 1976
Amends: T.D. 54509–F, further to add Windsor, Co. factory.

(L) Company: Evans Cooperage Co., Inc.
Articles: Steel drums
Merchandise: Rolled black carbon steel sheets
Factory: Harvey, LA
Statement signed: March 1, 1977
Basis of claim: Used in
Effective date: May 11, 1959
Rate forwarded to RC of Customs: New Orleans, April 13, 1977
Revokes: T.D. 55444–C, superseded

(M) Company: Fabral Corp.
Articles: Corrugated steel and aluminum roofing
Merchandise: Steel and aluminum in coils
Factories: Jackson, GA; Gridley, IL; and Lancaster, PA
Statement signed: November 20, 1968
Basis of claim: Appearing in
Effective date: November 16, 1976
Amendment issued by RC of Customs: Boston, January 4, 1977
Amends: T.D. 69–192–L, to add Jackson, GA, and Gridley, IL factories

(N) Company: GTE Sylvania
Articles: Ammonium metatungstate and paratungstate; sodium tungstate; tungstic acid, oxide; carbide powders metal powder; rod (black and cleaned); stranded wire (random length or cut pieces); rod (ground or ground seal); electrodes (black, cleaned or ground); cut pieces (black, cleaned or ground), wire (black, cleaned, or plated).
Merchandise: Tungsten waste and scrap, 5 to 95 percent tungsten content
Factory: Towanda, PA
Statement signed: March 3, 1977
Basis of claim: Used in less valuable wastes
Effective date: January 3, 1977
Rate forwarded to RC of Customs: New York, May 3, 1977

(O) Company: General Magnetic Tape Co., Inc.
Articles: Blank magnetic tape, slit or unslit (web)
Merchandise: Polyethelene terephthalate polymer (polyester film)
Factory: Upper Saddle River, NJ
Statement signed: April 6, 1977
Basis of claim: Appearing in
Effective date: November 1, 1973
Rate forwarded to RC of Customs: New York, April 14, 1977

(P) The B. F. Goodrich Co.
Articles: Hycar polyblend elastomers and Geon polyblend compounds
Merchandise: Polyvinyl chloride dispersion resins
Factory: Louisville, KY
Statement signed: March 15, 1977
Basis of claim: Used in
Effective date: January 1, 1975
Rate forwarded to RC of Customs: Baltimore, April 15, 1977

(Q) Company: W. L. Gore & Associates, Inc.
Articles: Expanded PTFE (polytetrafluoroethylene), PTFE laminates, PTFE tape for wire insulation
Merchandise: PTFE Resin, fine powder (polytetrafluoroethylene)
Factory: Elkton, MD
Statement signed: February 15, 1977
Basis of claim: Appearing in
Effective date: November 11, 1976
Rate forwarded to RC of Customs: Baltimore, April 14, 1977

(R) Company: Houdaille Industries, Inc.
Articles: Automotive bumpers
Merchandise: Hot rolled steel sheet
Factory: Huntington, WV
Statement signed: Feburary 28, 1977
Basis of claim: Appearing in
Effective date: September 2, 1976
Rate forwarded to RC's of Customs: New York and Chicago, April 13, 1977
Revokes: T.D. 69–218–E, superseded

(S) Company: Keeler Brass Co.
Articles: Automotive and furniture parts
Merchandise: Zinc ingots and zinc alloy slabs
Factories: Grand Rapids, Lake Odessa, Cedar Springs, and Zeeland, MI
Statement signed: April 7, 1977
Basis of claim: Appearing in
Effective date: May 25, 1973
Rate forwarded to RC's of Customs: New York and Chicago April 21, 1977
Revokes: T.D. 74–149–C, superseded

(T) Company: McCulloch Mite-E-Lite, Inc.
Articles: Portable electric generators and replacement rotors
Merchandise: Ceramic Magnet Ring Segments
Factory: Wellsville, NY
Statement signed: April 1, 1977
Basis of claim: Appearing in
Effective date: July 22, 1976
Rate forwarded to RC of Customs: New York, April 26, 1977

(U) Company: Pellerin Milnor Corp.
Articles: Commercial laundry washer extractors
Merchandise: Iron and steel: and steel products
Factory: Kenner, LA
Statement signed: December 8, 1976
Basis of claim: Appearing in
Effective date: November 9, 1976
Rate forwarded to RC of Customs: New Orleans, April 11, 1977

(V) Company: Pulverizing Services, Inc.
Articles: Fungicides
Merchandise: Technical Daconil 2787 (tetrachloroisophthalonitrile)
Factory: Moorestown, NJ
Statement signed: April 16, 1977
Basis of claim: Appearing in
Effective date: February 1, 1975
Rate forwarded to RC of Customs: New York, May 4, 1977

(W) Company: Reading Alloys, Inc.
Articles: Ferrovanadium carbide
Merchandise: Fused flaked vanadium pentoxide
Factory: Robesonia, PA
Statement signed: March 23, 1977
Basis of claim: Appearing in
Effective date: April 29, 1976
Rate forwarded to RC of Customs: Baltimore, April 18, 1977
Revoles: T.D. 76–249–J, superseded

(X) Company: Sanford Corp.
Articles: Plastic and aluminum pens/markers and ink in wet and dry forms
Merchandise: Plastic barrels; plastic caps; aluminum shells/tubes; dyes and pigments
Factory: Bellwood, IL
Statement signed: February 7, 1977
Basis of claim: Appearing in
Effective date: January 1, 1974
Rate forwarded to RC of Customs: Chicago, April 15, 1977

(Y) Company: Travis Mills, Inc.
Articles: Knitted piece goods
Merchandise: Polyester yarn
Factory: Lititz, PA

Statement signed: March 25, 1977
Basis of claim: Appearing in
Effective date: July 15, 1975
Rate forwarded to RC of Customs: New York, April 18, 1977

(Z) Company: Wm. Wrigley Jr. Co.
Articles: Sugar coated chewing gum in pellet form and slab (stick) chewing gum; laminated aluminum foil (gum wrappers)
Merchandise: Hard refined sugar; aluminum foil
Factories: Chicago, IL; Santa Cruz, CA; and Flowery Branch, GA
Statement signed: December 10, 1976
Basis of claim: Appearing in
Effective date: October 1, 1976
Amendment issued by RC of Customs: Chicago, December 6, 1976
Amends: T.D. 67–157–J, to add Flowery Branch, GA factory.

Decisions of the United States Court of Customs and Patent Appeals

(C.A.D. 1194)

THE UNITED STATES v. FAIRFIELD GLOVES, UNITREX OF AMERICA, INC., CIRCLE IMPORT-EXPORT COMPANY, KWAN YUEN CO., INC. CALIFORNIA GARDENWARE DISTR., No. 77–6

(— F. 2d —)

1. RULE 3.2(b) OF CUSTOMS COURT, VALIDITY THEREOF

   Customs Court judgment upholding validity of Rule 3.2(b) of Customs Court, affirmed.

2. GENERAL RULE OF CONSTRUCTION–STRICT OR BROAD CONSTRUCTION–INTENT OF CONGRESS

   Statutes waiving sovereign immunity, and thereby defining jurisdiction, are to be strictly construed, but Congressional adoption of broad language authorizing suit is not to be thwarted by an unduly restrictive interpretation.

3. ID.

   Term "commenced" in 28 USC 2631 is broader than "filing."

4. ID.

   Congress delegated authority to Customs Court to prescribe by rule the "manner" of filing summonses.

5. CCPA–SCOPE OF REVIEW

   Only limitation imposed on rule-making authority of Customs Court by Court of Customs and Patent Appeals is that substantial rights of litigants not be unduly circumscribed.

6. INTENT OF CONGRESS–EXTRINSIC AIDS TO CONSTRUCTION

   Statements made in briefs or in testimony presented at committee hearings cannot be considered as a guide to what Congress intended, since Congress has not delegated to organizations or individuals appearing before its committees the authority to construe a statute.

7. RULE 3.2(b), VALIDITY THEREOF

Rule 3.2(b) of Customs Court held a reasonable and valid exercise of authority delegated to the court by Congress.

United States Court of Customs and Patent Appeals, July 21, 1977

Appeal from United States Customs Court, C.R.D. 76–10

[AFFIRMED.]

Barbara Allen Babcock, Assistant Attorney General, *David M. Cohen*, Chief, Customs Section, *Edmund F. Schmidt* for the United States.

Robert Glenn White (Glad, Tuttle & White) attorneys of record, for appellees.

Walter E. Doherty, Jr., E. Thomas Honey, James Caffentzis, attorneys of record, for Amicus Curiae.

[Argued on June 1, 1977 by David M. Cohen for appellant and by Robert Glenn White for appellees]

Before MARKEY, *Chief Judge*, RICH, BALDWIN, LANE and MILLER, *Associate Judges*.

MILLER, Judge.

[1] This is an appeal from an order of the United States Customs Court in *Fairfield Gloves et al.* v. *United States*, 77 Cust. Ct. —, C.R.D. 76–10 (1976), upholding the validity of Rule 3.2(b) of the Customs Court [1] and ordering that the date of filing shown on summonses in five actions be corrected to show filing as of the date of their postmark. Noting that a controlling question of law was involved, the court also granted an interlocutory order for the Government to apply for an appeal to this court pursuant to 28 USC 1541(b). The Government's petition for leave to appeal was granted by this court on November 30, 1976, and a notice of appeal and assignment of errors was filed on December 9, 1976. We affirm.

The facts in this case are uncontested. The summonses were mailed from Los Angeles, California, by certified mail in accordance with Rule 3.2(b) on January 28, 1976, one hundred eighty days after denial of the protest.

Sections 2631(a) and 2632(a) of 28 USC provide.

[1] Rule 3.2 Commencement of Action

(b) Summons: Filing by Mail; Date of Filing: For purposes of commencement of an action, a summons sent by registered or certified mail properly addressed to the clerk of the court at One Federal Plaza, New York, New York 10007, with the proper postage affixed and return receipt requested, shall be deemed filed as of the date of postmark.

§2631. *Time for commencement of action.*

(a) An action over which the court has jurisdiction under section 1582(a) of this title is barred unless commenced within one hundred and eighty days after:

(1) the date of mailing of notice of denial, in whole or in part, of a protest pursuant to the provisions of section 515(a) of the Tariff Act of 1930, as amended; or

(2) the date of denial of a protest by operation of law pursuant to the provisions of section 515(b) of the Tariff Act of 1930, as amended.

§2632. *Customs Court procedure and fees.*

(a) A party may contest denial of a protest under section 515 of the Tariff Act of 1930, as amended, or the decision of the Secretary of the Treasury made under section 516 of the Tariff Act of 1930, as amended, by bringing a civil action in the Customs Court. A civil action shall be commenced by filing a summons in the form, manner, and style and with the content prescribed in rules adopted by the court.

The Government contends that Rule 3.2(b), permitting an action to be commenced by mailing a summons, rather than by receipt by the court, within the statutory period, impermissibly attempts to expand the jurisdiction of the Customs Court and is, therefore, invalid. It urges that 28 USC 2631 is a statute waiving sovereign immunity and is to be strictly construed, that there is a body of case law construing the term "filing" to mean actual receipt by a court, that the legislative history of the Customs Courts Act of 1970, Pub. L. No. 91–271, 84 Stat. 274 (1970) (codified in scattered sections of 28 USC), shows a Congressional intent that the date of filing of a summons means the date of receipt by the court, and that other statutes show that when Congress intended that "filing" mean "mailing" it explicitly so provided. Appellees and amicus [2] urge that Congress delegated to the Customs Court the authority to provide by rule the "manner" in which an action may be "filed," and hence "commenced," and that Rule 3.2(b) is a valid exercise of that authority.

Opinion

[2] We recognize the general rule that statutes waiving sovereign immunity, and thereby defining jurisdiction, are to be strictly construed. *United States* v. *Boe*, 64 CCPA__, C.A.D. 1177, 543 F. 2d

[2] A brief amicus curiae was filed by the Association of the Customs Bar.

151 (1976).[3] However, it is "the terms of [the sovereign's] consent to be sued in any court" which "define that court's jurisdiction." *United States* v. *Sherwood*, 312 U.S. 584, 586 (1941). Congressional adoption of broad statutory language authorizing suit is not to be thwarted by an unduly restrictive interpretation. *Canadian Aviator, Ltd.* v. *United States*, 324 U.S. 215, 222 (1945); see also *Nahrgang* v. *United States*, 51 CCPA 76, C.A.D. 840 (1964).

The Government's arguments would be much more persuasive if section 2631(a) read:

> An action . . . is barred unless a summons is filed with the Customs Court within one hundred eighty days.

[3] Congress, however, used the term "commenced," which is broader than "filing."[4] Also, Congress provided that an action is "commenced by filing a summons in the . . . *manner* . . . prescribed in rules adopted by the court." (Emphasis ours.) 28 USC 2632(a). In *United States* v. *Thompson-Starrett Co.*, 12 Ct. Cust. Appls. 28, T.D. 39896 (1923), this court's predecessor decided the question of whether timely mailing could be considered timely "filing" in the negative, based on the statutory provision which then governed appeals to the court. Section 515 of the Tariff Act of 1922, 42 Stat. 970, provided for appeals to the Court of Customs Appeals "within the time and in the manner provided by law." The "manner" provided by law was "filing in the office of the clerk of said court a concise statement of errors of law and fact complained of." Tariff Act of 1909, ch. 6, §29, 36 Stat. 105, 107. However, in 26 USC 7502, timely mailing of documents to the Tax Court is treated as timely filing" of such documents.

Under 18 USC 3772, the Supreme Court has been delegated authority to "prescribe the times for and manner of taking appeals and applying for writs of certiorari" in criminal cases. The Court, pursuant to this grant of authority, promulgated its own Rule 22, which, among other things, fixes the time for filing a petition for writ of certiorari and provides that timely mailing is deemed timely filing

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[3] We also recognize the rule that statutes giving the right of appeal are to be liberally construed in furtherance of justice. *Wilmington Shipping Co.* v. *United States*, 52 CCPA 76, 79, C.A.D. 861 (1965). Although the Customs Courts Act of 1970 changed the procedure for obtaining judicial review in the Customs Court, 28 USC 1582 and 2631 can still be viewed as statutes giving the right of appeal. Prior to that Act, denials of protests were *automatically* transmitted to the Customs Court, a complete waiver of sovereign immunity from suit. Tariff Act of 1930, ch. 497, § 515, 46 Stat. 734. It is clear from the legislative history of the Customs Courts Act that this change in the method of appeal from denials of protests was merely to remove cases, which the importer had no intention or desire to litigate, from the Customs Court's crowded docket. Such change was not designed to prejudice the appeal rights of importers who desired judicial review. S. REP. NO. 91-576, 91st Cong., 1st Sess. 7-10 (1969).

[4] Civil actions may be "commenced" in courts by means other than "filing" or filing with the court. See, *e.g.*, IOWA R. CIV. P. 48 (civil action commenced by serving the defendant with an original notice).

in the case of petitions from judgments of district courts outside the continental United States.

[4] That Congress has not delegated authority to the Customs Court to prescribe the time for the commencement of an action does not detract from the clear wording of the statute (28 USC 2632(a)) indicating that Congress *has* delegated authority to prescribe the "manner" of filing summonses in rules adopted by the court.

[5] Within the rule-making authority of the Customs Court, this court has advanced only one limitation, namely: that substantial rights of litigants not be unduly circumscribed. *S. Stern & Co.* v. *United States*, 51 CCPA 15, C.A.D. 830, 331 F. 2d 310 (1963), *cert. denied*, 377 U.S. 909 (1964). Far from unduly circumscribing litigants' rights, Rule 3.2(b) recognizes the national jurisdiction of the Customs Court and attempts to place litigants far from the court's New York City headquarters on an equal footing with those nearby in the commencement of actions in the court.

We are not persuaded by the cases cited by the Government for the proposition that "mailing" does not constitute "filing." In all of those cases the relevant statute or rule specified that filing was to be at a definite place within a specified time, and none of the statutes included a delegation of the type of authority found in 28 USC 2632(a).[5] Nor are we persuaded by what the Government terms "the relevant legislative history" of the Customs Courts Act [6] Statements made in briefs or in testimony presented at committee hearings cannot be considered as a guide to what Congress intended, since Congress has not delegated to organizations or individuals appearing before its committees the authority to construe a statute. See R. Sturm, *A Manual of Customs Law* 189 (1974), and cases cited therein.

[7] In view of the foregoing, we hold that Rule 3.2(b) of the Customs Court is a reasonable and valid exercise of authority delegated to the court by Congress.

The order of the Customs Court is *affirmed.*

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[5] Thus, the statute (section 6 of the White Slave Traffic Act, ch. 395, 36 Stat. 825, 826 (1910)) in *United States* v. *Lombardo*, 241 U.S. 73 (1916), required that a statement be filed "with the Commissioner General of Immigration." Section 2601(b) of 28 USC, the statute involved in *Seneca Grape Juice Corp.* v. *United States*, 61 CCPA 118, 492 F. 2d 1235 (1974), required "filing in the office of the clerk of the Court of Customs and Patent Appeals." The Customs Court rule involved in *Minkap of California, Inc.* v. *United States*, 55 CCPA 1, C.A.D. 926 (1967) required motions for rehearing to be "filed with the clerk of the court at New York."

Decisions of the United States Customs Court

Customs Decisions

(C.D. 4706)

HENRY A. WESS, INC. *v.* UNITED STATES

Toys

An article described as a "Frisky Whiskey Bottle," and admittedly a "part" of a practical joke article, was classified under item 737.90 of the tariff schedules as a "part" of a toy, and assessed with duty at the rate of 35% ad valorem. Plaintiff's claims for classifications as machines not specially provided for (item 678.50), or as electric parts of articles not specially provided for (item 688.40), or as practical joke articles (item 737.65) dismissed.

PARTS–CLASSIFICATION

Although the item in issue was admittedly a part of a practical joke article, it could not be classified under the *eo nomine* provision for practical joke articles (737.65) since that provision does not provide for "parts" of practical joke articles. *See United States* v. *Lyons Transport*, 45 CCPA 104, C.A.D. 681 (1958); *Pacific Fast Mail* v. *United States*, 68 Cust. Ct. 41, C.D. 4333, 338 F. Supp. 506 (1972), *appeal dismissed*, 59 CCPA 223 (1972).

PARTS PROVISION–BASKET PROVISIONS

Under General Interpretative Rule 10(ij), a tariff provision will prevail over a "parts" provision, only if it is a specific provision which describes the merchandise. Plaintiff's alternative claims under items 678.50 and 688.40, which are for articles not specially provided for elsewhere in the schedules, are basket provisions, and therefore less specific than the provision for "parts" of toys under which classification was made. *See Ideal Toy Corporation* v. *United States*, 63 Cust. Ct. 406, C.D. 3926, *aff'd*, 58 CCPA 9, C.A.D. 996, 433 F. 2d 801 (1970).

TOYS–PLAYTHINGS

Under schedule 7, part 5, subpart E headnote, a toy is defined as "any article chiefly used for the amusement of children or adults." Plaintiff's contention that the item in issue was not a plaything, and that toys chiefly used for amusement are chiefly playthings, is without merit. An article need not be a "plaything" in order to be classified a "toy" under the tariff schedules. *See Ideal Toy Corporation* v. *United States, supra; United States* v. *Topps Chewing Gum, Inc.*, 58 CCPA 157, C.A.D. 1022, 440 F. 2d 1384 (1971). "If the purpose of an object is to give the same kind of enjoyment as playthings give, its purpose is amusement, whether the object is to be manually manipulated, used in a game, or * * * worn." *United States* v. *Topps Chewing Gum, Inc.*, 58 CCPA at 159.

Court No. 67/49679

Port of Cleveland

[Judgment for defendant.]

(Decided July 11, 1977)

Allerton deC. Tompkins for the plaintiff.

Barbara Allen Babcock, Assistant Attorney General (*David M. Cohen*, Chief, Customs Section, and *William F. Atkin*, trial attorney), for the defendant.

RE, Chief Judge: The question presented in this case pertains to the proper classification, for customs duty purposes, of certain merchandise imported from Japan. The customs invoices described the merchandise as "mechanical device whiskey bottle" and "battery operated mechanical device for bottles."

The merchandise was classified by the customs officials as "[t]oys, and parts of toys, not specially provided for: * * * Other," under item 737.90 of the Tariff Schedules of the United States (TSUS). Consequently, it was assessed with duty at the rate of 35% ad valorem.

Plaintiff contests the classification and, hence, the rate of duty assessment. It is plaintiff's primary claim that the merchandise should have been properly and lawfully classified as "[m]achines not specially provided for, and parts thereof," under item 678.50 of the tariff schedules which provides for a duty rate of only 10% ad valorem. Alternatively, plaintiff claims classification of the imported merchandise as "[e]lectrical articles, and electrical parts of articles, not specially provided for," under item 688.40, with a duty rate of 11.5% ad valorem, or as "[m]agic tricks, and practical joke articles," under item 737.65, with a duty rate of 20% ad valorem.

The pertinent provisions of the tariff schedules may be set forth as follows:

Classified by the customs officials under:

Schedule 7, Part 5, "Subpart E.–Models; Dolls, Toys, Tricks, Party Favors

Subpart E headnotes:

* * * * * * *

2. For the purposes of the tariff schedules, a "toy" is any article chiefly used for the amusement of children or adults.

* * * * * * *

Toys, and parts of toys, not specially provided for:

* * * * * * *

737.90	Other	35% ad val."

Plaintiff's claimed classifications:

Schedule 6, Part 4, "Subpart H. – Other Machines

* * * * * * *

678.50	Machines not specially provided for, and parts thereof	10% ad val."

Schedule 6, "Part 5. – Electrical Machinery and Equipment

* * * * * * *

688.40	Electrical articles, and electrical parts of articles, not specially provided for	11.5% ad val.

* * * * * * *

	[Schedule 7, Part 5, Subpart E]	
737.65	Magic tricks, and practical joke articles	20% ad val."

It has been stipulated that the merchandise is a "part" of a practical joke article described as a "Frisky Whiskey Bottle." On the development of the concept of parts in customs law, see cases discussed in *Vilem B. Haan et al.* v. *United States*, 67 Cust. Ct. 104, 112–118, C.D. 4260, 332 F. Supp. 182, 186–191 (1971). The parties, however, are in serious disagreement whether the practical joke article, i.e., the Frisky Whiskey Bottle, is a toy within the meaning of the tariff laws.

Although the tariff laws specifically provide for "practical joke articles" in item 737.65 of the tariff schedules, that item does not provide for "parts" of practical joke articles. The customs officials, therefore, were confronted with the problem of classifying a part of a practical joke item when the provision for practical joke articles did not cover parts.

In the absence of a provision for "parts," the customs officials did not classify the merchandise, i.e., the part of the practical joke article, under the *eo nomine* provision for practical joke articles. They thereby adhered to the well-established principle of customs law that parts of an article are not included within an *eo nomine* designation of the article unless the tariff provision also expressly covers "parts" of the article. *See United States* v. *Lyons Transport*, 45 CCPA 104, C.A.D. 681 (1958); *Pacific Fast Mail* v. *United States*, 68 Cust. Ct. 41, C.D. 4333, 338 F. Supp. 506 (1972), *appeal dismissed*, 59 CCPA 223 (1972).

For customs classification purposes, parts of an article, and the article itself, are deemed to be separate and distinct articles. Hence, because of the absence of a parts provision, it cannot be contended that parts of practical joke articles are classifiable under the *eo nomine* provision for practical joke articles. Plaintiff's claim that the imported merchandise, concededly a part, is classifiable under item 737.65, which *eo nomine* covers the article, is therefore overruled.

Commencing with the premises that the merchandise is a constituent or component part of a practical joke article, and that "practical joke articles" are provided for *eo nomine* in item 737.65, plaintiff has set forth its position in its brief as follows:

> "However, said Item 737.65 does not provide for 'parts' of practical joke articles, so plaintiff claims that the imported item should be classified either under the provision in TSUS 688.40 for 'electrical articles * * * not specially provided for' with duty at 11.5% ad valorem, or as 'machines not specially provided for' under TSUS 678.50 with duty at 10% ad valorem."

The classification problem presented is new only insofar as the merchandise consists of parts of practical joke articles. An analogous or comparable problem was dealt with in *Ideal Toy Corporation* v.

United States, 63 Cust. Ct. 406, C.D. 3926 (1969), *aff'd*, 58 CCPA 9, C.A.D. 996, 433 F. 2d 801 (1970). In the *Ideal Toy* case, the merchandise consisted of miniature automobile chassis and bodies designed for use with a particular commercial line of model cars known as the Motorific line. Since the model kit provisions of the tariff schedules, i.e., items 737.05 through 737.09, did not provide for "parts" of models, the automobile chassis and bodies were classified by the customs officials as parts of toys under item 737.90, and were assessed with duty at 35% ad valorem. Plaintiff contested the classification and contended that the miniature car chassis and bodies should have been classified either as machines not specially provided for under item 678.50, dutiable at 10% ad valorem, or as electrical articles not specially provided for, under item 688.40 with duty at 11.5% ad valorem. This court, in an opinion by Judge Maletz, overruled the protests, and held that the automobile chassis and bodies had been correctly classified as parts of toys under item 737.90. The appellate court not only agreed with the conclusion of this court, but also adopted its reasoning and analysis of the legal problem presented. Indeed, the appellate court adopted this court's statement of the facts and quoted extensively from its opinion.

In the *Ideal Toy* case, the appellant-importer, before the appellate court, pursued the contention that had been previously advanced in this court, that the miniature automobile chassis and bodies were not dutiable as parts of toys under item 737.90 "inasmuch as those parts are specifically provided for elsewhere." The appellate court did not agree with that contention and quoted with approval the opinion of the Customs Court that "the intent of general headnote 10(ij) is that a provision for 'parts' is to be deemed more specific than a provision for 'articles, not specially provided for,' and therefore prevails" over general or "basket" provisions.

The appellate court proceeded to say:

> "The court [U.S. Customs Court] was of the view, and we think correctly so, that the provisions for articles not specially provided for of rubber or plastics (item 774.60); machines not specially provided for (item 678.50); and electrical articles not specially provided for (item 688.40) are all general descriptive provisions, i.e., basket clauses, which do not specifically describe one type of article." 58 CCPA at 13.

Among other things the court quoted the statement of the trial court that "[t]hey [the provisions urged by the appellant-importer] are scarcely the 'specific provisions' which would invoke the operation of general headnote 10(ij)."

Judge Almond, writing for the appellate court in the *Ideal Toy* case, concluded by stating: "[s]uffice it to say that we are not persuaded

of error in the judgment rendered by the Customs Court" and, therefore, affirmed. A close reading of the appellate court opinion reveals that, in effect, it adopted the opinion of the Customs Court.

Much that is stated in both the trial and appellate courts' opinions in the *Ideal Toy* case is applicable to the discussion of the mechanical device that is a part of the whiskey bottle in the present case.

Quite naturally the defendant in this case approves, and indeed relies upon the legal approach by which the customs officials in the *Ideal Toy* case classified the miniature automobile chassis and bodies as parts of toys under item 737.90. In its main brief defendant submits that:

> "This Court's prior approval of this scheme as well as logic support this classification—since practical joke articles are toys, parts of practical joke articles are parts of toys and absent a specific provision for parts of practical joke articles, the next most specific classification would be that as 'parts of toys.'"

Defendant stresses the customs law principle that a provision for "articles not specially provided for" is less specific than a provision for "parts," and therefore a provision for "parts" prevails over a "basket" provision. *J. E. Bernard & Co., Inc.* v. *United States*, 62 Cust. Ct. 536, C.D. 3822, 299 F. Supp. 1129 (1969), *aff'd*, 58 CCPA 91, C.A.D. 1009, 436 F. 2d 506 (1971); *J. E. Bernard & Co., Inc.* v. *United States*, 59 Cust. Ct. 31, C.D. 3060 (1967).

Differently stated, the defendant relies upon the principle that, under General Interpretative Rule 10(ij), a tariff provision will prevail over a "parts" provision, only if it is a specific provision which describes the merchandise. Hence, the defendant emphasizes that since both of plaintiff's claimed classifications are not specific provisions, but are provisions for "articles not specially provided for," they cannot prevail over a "parts" provision. Specifically, the defendant concludes that since a "parts" provision, such as item 737.90, TSUS, will prevail over "basket" provisions, "such as the two classifications claimed," plaintiff has "failed to meet either of its burdens of proof and its claim must therefore fail."

It is significant that the competing provisions in the *Ideal Toy* case are identical to those in the present action, i.e., item 737.90 versus items 678.50 and 688.40. In view of the judicial rejection of the contentions, now repeated in this case, it is clear that plaintiff's claimed classifications under items 678.50 and 688.40 must be rejected.

Plaintiff, nevertheless, vigorously disagrees and, in its main brief, asserts that "[u]nder the present tariff law a practical joke article is not a 'toy'; it can not be classified as a 'toy'. Therefore, a part of a

practical joke article is not a 'part' of a 'toy'." It adds that "[t]his logical reasoning is inevitable." In its reply brief, it asserts that the *Ideal Toy* decision "does not support the claims advanced by defendant," and that it "has no relevancy whatsoever to the claims advanced by plaintiff in this case."

The court does not agree that the *Ideal Toy* case is irrelevant to the solution of the customs classification problem presented. Also, the court does not agree with the reasons or examples given by plaintiff, in its various briefs, designed to show that a practical joke article is not a toy.

Plaintiff takes issue with defendant's assertion that "[s]ince a practical joke article is chiefly used for the amusement of children or adults it is obviously a toy." Furthermore, plaintiff asserts that a practical joke article is not a "plaything," and that "toys chiefly used for amusement are basically playthings."

That "toys must be playthings" has not been the law subsequent to the enactment of the tariff schedules. *See S. Y. Rhee Importers* v. *United States*, 61 CCPA 2, C.A.D. 1108, 486 F. 2d 1385 (1973); *United States* v. *Topps Chewing Gum, Inc.*, 58 CCPA 157, C.A.D. 1022, 440 F. 2d 1384 (1971).

The *Topps Chewing Gum* case illustrates clearly that an article need not be a plaything to be a toy under the tariff schedules. In *Topps*, the question presented was whether buttons with humorous sayings were properly classified as "toys" under item 737.90 of the tariff schedules. This court held that the buttons were not classifiable as "toys" since "to constitute a toy the article must be a plaything." *Topps Chewing Gum, Inc.* v. *United States*, 63 Cust. Ct. 431, 434, C.D. 3930 (1969). The Court of Customs and Patent Appeals reversed (C.A.D. 1022, *supra*), and expressly rejected the "plaything" argument now being urged anew in the present case.

Specifically referring to the holding of this court, that for tariff purposes a toy had to be a plaything, the appellate court in the *Topps* case wrote:

> "The court [Customs Court] reached this result through an unduly narrow construction of the term 'amusement.' After noting that prior to the enactment of the TSUS a 'toy' was defined as a child's plaything, the court cited *Wilson's Customs Clearance, Inc.* v. *United States*, 59 Cust. Ct. 36, C.D. 3061 (1967), for the proposition that the TSUS removed the limitation regarding the users' age but left the requirement that the object be a plaything. We think this conclusion is unsupported by the wording of the TSUS or by case authority. In the *Wilson's* case the court did not hold that to be a toy an object had to *be* a plaything * * *." (Emphasis in original.) 58 CCPA at 159.

Any remaining doubt is dispelled by the following statement in the *Rhee Importers* case:

> "We note further that three of appellant's four witnesses considered the articles to be toys or not to be toys upon the basis of whether they were or were not used as playthings—a factor considered irrelevant by this court upon enactment of the Tariff Schedules of the United States. *United States* v. *Topps Chewing Gum, Inc.*, 58 CCPA 157, C.A.D. 1022, 440 F. 2d 1384 (1971)." 61 CCPA at 5.

In its surreply brief plaintiff modified its original argument that to be a toy an article had *to be* a plaything. It extracts a quotation from the *Topps* opinion and asserts that the provision for toys in item 737.90 "is limited to those articles of amusement which 'give the same kind of enjoyment *as playthings give*'." (Emphasis in original.) The quotation is taken from a portion of the *Topps* opinion wherein the court is distinguishing the case of *Wilson's Customs Clearance, Inc.* v. *United States*, 59 Cust. Ct. 36, C.D. 3061 (1967).

The language of the court in *Topps* follows:

> "In the *Wilson's* case the court did not hold that to be a toy an object had to *be* a plaything, but that the 'character of amusement involved was that derived from an item which is essentially a plaything.' *Id* at 39. The court thus stressed the quality of mind or emotion induced by the object as controlling, and we think that is the best approach to interpreting the TSUS definition. If the purpose of an object is to give the same kind of enjoyment as playthings give, its purpose is amusement, whether the object is to be manually manipulated, used in a game, or, as here, worn." (Emphasis in original.) 58 CCPA at 159.

Surely plaintiff can find no support in this quotation for its apparent attempt to revive the pre-TSUS requirement that a toy had to be a plaything. In view of the TSUS expanded concept of toy, *Topps* teaches that "[i]f the purpose of an object is to give the same kind of enjoyment as playthings give, its purpose is amusement, whether the object is to be manually manipulated, used in a game, or, as here [the buttons in the *Topps* case], worn." Clearly the thrust of the explanation is that the article must have amusement as its purpose or *raison d'être*.

Plaintiff expresses the concern that unless its suggested meaning of "toys" is accepted, the item that covers "toys" will invade "tariff provisions for such things as cards, target rifles, cameras, television sets, firecrackers, race horses, golf, tennis and outdoor sports equipment, as well as *every* article of amusement in an 'amusement park'."

No argument, however vigorously asserted, can alter the fact that the governing statutory language provides that "[f]or the purposes

of the tariff schedules, a *'toy'* is any article chiefly used for the amusement of children or adults." Plaintiff has not shown that the Frisky Whiskey Bottle, admittedly a practical joke article, is not an article chiefly used for the amusement of adults. In the absence of a showing to the contrary, the court may rely upon the presumption of correctness that the Frisky Whiskey Bottle is an article chiefly used for amusement, and therefore, for the purpose of classifying the imported parts, a toy within the meaning of the tariff schedules.

It cannot be disputed that in order to prevail plaintiff must bear the burden of proving that the customs classification is erroneous, and that its claimed classification is correct. 28 U.S.C. § 2635(a); *United States* v. *New York Merchandise Co., Inc.*, 58 CCPA, 53, C.A.D. 1004, 435 F. 2d 1315 (1970). Plaintiff has failed to meet its burden of proof.

In view of the foregoing it is the determination of the court that the classification of the imported merchandise under the "parts of toys" provision of tariff item 737.90, as classified, prevails over the tariff items claimed by plaintiff.

Since it is the determination of the court that the merchandise has been properly classified, the classification is affirmed and the protest is overruled.

Judgment will issued accordingly.

(C.D. 4707)

CRABTREE VICKERS, INC. *v.* UNITED STATES

Plates, for printing

TSUS item 668.38 provides for plates, engraved or otherwise prepared for printing, in the exact terms of paragraph 341 of the 1922 and 1930 Tariff Acts. Under the 1922 and 1930 Tariff Acts, this court held that the term "plates * * * engraved or otherwise prepared for printing" includes only such as, in the condition imported, are ready for printing. *The Jersey City Printing Co. et al.* v. *United States*, 63 Treas. Dec. 397, T.D. 46219 (1933); *J. E. Bernard & Co., Inc.* v. *United States*, 6 Cust. Ct. 46, C.D. 422 (1941).

When a given tariff term has been judicially interpreted and is thereafter reenacted in substantially the same language, the rule is that the term, when used in a later statute, will be given the same interpretation unless a legislative intent to the contrary clearly appears. *W. E. Sellers* v. *The Cronite Co., Inc.*, 45 CCPA 27, C.A.D. 668 (1957); *August Bentkamp* v. *United States*, 40 CCPA 70, C.A.D. 500 (1952).

It is agreed that, in the condition imported, the merchandise consisting of aluminum plates coated with a photosensitive plastic cannot print anything; that before they can be used for printing the plates must be exposed to an image and the image developed.

HELD. The imported plates are not in the condition of the plates Congress intended to provide for under the TSUS item 668.38 provision, "plates * * * engraved or otherwise prepared for printing," as claimed by plaintiff.

Court No. 75–1–00278

Port of New York

[Plaintiff's motion for summary judgment denied; defendant's cross-motion granted.]

(Decided July 15, 1977)

Murray Sklaroff for the plaintiff.
Barbara Allen Babcock, Assistant Attorney General (*Susan Handler-Menahem*, trial attorney), for the defendant.

LANDIS, Judge: This action is brought to contest the classification of merchandise imported from England consisting of aluminum plates coated with a photosensitive plastic. Customs officials classified the plates as parts of printing machinery dutiable at 6 per centum ad valorem under item 668.50 of the Tariff Schedules of the United States (TSUS).[1]

Plaintiff claims that the plates are properly dutiable at only 5 per centum ad valorem under TSUS item 668.38, which provides as follows:

668.38	Steel plates, stereotype plates, electrotype plates, half-tone plates, photogravure plates, photo-engraved plates, and plates of other materials, engraved or otherwise prepared for printing	5% ad val.

[1] Schedule 6. – METALS AND METAL PRODUCTS
Part 4. – Machinery and Mechanical Equipment

•	• • • • • • •	•
	Printing machinery:	
• • •	Textile printing machinery	• • •
668.20	Other, including printing presses, offset duplicating machines, and stencil copy machines	6% ad val.
•	• • • • • • •	•
668.50	Other parts of printing machinery	The rate for the articles of which they are parts

Both sides assert that, material to the decision in this case, there is no geniune issue of fact. Pursuant to rule 8.2 of this court, both sides have moved for summary judgment. Plaintiff's motion seeks judgment sustaining the claim under TSUS item 668.38. Defendant's motion requests judgment over-ruling plaintiff's claim and sustaining the customs classification upder TSUS item 668.50.

Factually,[2] it is agreed that the plates are parts of printing machinery [3] albeit in an unfinished condition;[4] that, in the condition imported the plates cannot print anything; that before they can be used for printing the plates must be exposed to an image and the image developed; and that the imported plates are none of the plates descriptively classified in item 668.38. The only issue in this case is whether the plates fall within the item 668.38 classifying provision for plates "of other materials, engraved or otherwise prepared for printing." If the plates are engraved or otherwise prepared for printing, specifically provided for under item 668.38, then they are not properly classifiable as parts of printing machinery, because a tariff provision for parts of an article does not prevail over a specific tariff provision for such part.[5]

Plaintiff contends that, while not engraved, the plates have been otherwise prepared for printing by coating with a photosensitive plate.[6] Citing, *Christo Poulos & Co., Inc., et al.* v. *United States*, 35 Cust. Ct. 69, C.D. 1724 (1955), plaintiff argues that the phrase "otherwise prepared," as frequently interpreted, is broad enough to

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[2] The plates in this case are described on the invoices as "Visiplates" and "Alympic Gold Plates." As pleaded by plaintiff (Complaint, paragraphs 6 and 7), defendant admits that:

6. As imported, each style of plate, regardless of description, is comprised of a base of aluminum which has been given an electrochemical grain, then anodized, then coated with a light sensitive photopolymer. The plates can only be used in conjunction with printing machinery, but must first be exposed to light and the image which it is desired to reproduce in print. After such exposure the plates are developed and can then be used for printing. The exposure and developing are carried out after importation.

7. The "Visiplates" yield a "negative" image after exposure and developing, that is, the portions of photopolymer reached by light are hardened. On developing, the softer areas, where light has been masked by the image, are washed away. The "Alympic Gold Plates" yield a "positive" image, after exposure and developing. The portions of photopolymer reached by light are softened, and are washed away in the developing.

[3] "10. General Interpretative Rules. For the purposes of these schedules—

* * * * * * * * *

(ij) a provision for 'parts' of an article covers a product solely or chiefly used as a part of such article, but does not prevail over a specific provision for such part." [TSUS, General Headnotes and Rules of Interpretation.]

[4] "10. General Interpretative Rules. * * *

* * * * * * * * *

(h) unless the context requires otherwide, a tariff description for an article covers such article, whether assembled or not assembled, and whether finished or not finished." [TSUS, General Headnotes and Rules of Interpretation.]

[5] N. 3.

[6] Exhibits attached to the affidavit of Denis B. White, president of Howson-Algraphy, Inc., are stated to be representative and identical to the invoiced visiplates (exhibit 1) and alympic gold plates (exhibit 3), except as to length and width. Exhibits 1 and 3, after the exposure and developing described in n. 2, *supra*, are finished plates in the condition of exhibits 2 and 4, ready for use in printing.

cover the plastic coating process which, in this case, advanced the plates toward their ultimate use in printing.

Defendant, on the other hand, argues that, in the tariff sense, plates engraved or otherwise prepared for printing means plates which, if not engraved for printing, are, in the condition imported, comparable to a plate engraved for printing, that is, capable without further processing of producing an image by printing.

I conclude that the words "engraved * * * for printing" connote a plate that requires no further processing for use in printing, and that the term "otherwise prepared" for printing logically also connotes a plate which, if not engraved, is in a prepared condition requiring no further processing for use in printing.

Plates, engraved for printing, have been specially provided for in tariff acts as far back as 1883. Under the 1913 Tariff Act, paragraph 137, provided for plates engraved for printing as follows:

> 137. Steel plates engraved, stereotype plates, electrotype plates, halftone plates, photogravure plates, photo-engraved plates, and plates of other materials, engraved for printing, plates of iron or steel engraved or fashioned for use in the production of designs, patterns, or impressions on glass in the process of manufacturing plate or other glass, 15 per centum ad valorem; lithographic plates of stone or other material engraved, drawn, or prepared * * * 25 per centum ad volorem.

The significant point of the above provision is that, in the qualified sense of plates for printing, the only plates Congress provided for were engraved plates. An engraved plate is a plate that has had pictures, lettering, etc. cut into the plate for the purpose of printing. No further processing is necessary to print from plates made by such a process.[7] The 1913 Tariff Act did not provide for plates "otherwise prepared for printing." In the 1922 Tariff Act, paragraph 341,[8] Congress amended the provision for plates for printing to include such as were "engraved or otherwise prepared for printing." The amendment was apparently prompted by what was reported to the Senate Committee on Finance in the *Summary of Tariff Information*, 1921, as follows, at page 448:

> "Suggested Changes.—The plates named in this paragraph are not strictly engraved plates. The words 'or otherwise prepared' might be inserted * * * after 'engraved.' "

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[7] *Funk & Wagnalls Standard Dictionary, International Edition* (1963) defines the term "engrave" as follows:

engrave v.t. *.graved, .graving* 1 To carve or etch figures, letters, etc., into (a surface). 2 To impress deeply. 3 To cut (pictures, lettering, etc.) into metal, stone, or wood, for printing. 4 To print from plates made by such a process. * * *

[8] Paragraph 341 of the 1930 Tariff Act is the same as paragraph 341 of the 1922 Tariff Act.

TSUS item 668.38 provides for plates engraved or otherwise prepared for printing in the exact terms of paragraph 341 of the 1922 and 1930 Tariff Acts. The master rule in the consideration of statutes is to ascertain and carry out the legislative intent using, if necessary, established rules of construction. *Sears, Roebuck & Co.* v. *United States*, 26 CCPA 161, 167, C.A.D. 11 (1938). It is clear, under the 1913 Tariff Act, that Congress limited the classification of plates for printing to those engraved for printing and that engraved plates for printing require no further processing for printing. It is not at all clear what Congress intended when it inserted the words "otherwise prepared" after the word "engraved" in the 1922 and subsequent tariff acts. The whole point of plaintiff's argument is that in the condition imported the plates are "otherwise prepared," because they have been advanced toward their ultimate use in printing by coating with a photosensitive plastic. *Christo Poulos*, relied on by plaintiff, does support the rule that the word "prepared," in a tariff sense, ordinarily means that a commodity has been processed in a manner that advances and makes it more valuable for its intended use. The merchandise in *Christo Poulos*, however, was ginger root in brine classified under a provision (paragraph 778) of the 1930 Tariff Act for "Ginger root, candied, or otherwise prepared or preserved." That provision unqualifiedly covered ginger root, candied or otherwise prepared or preserved. Item 668.38 does not unqualifiedly cover all plates "engraved or otherwise prepared." It only covers such plates as have been "engraved or otherwise prepared for printing." The distinction is a material one, and plaintiff's resort to the rule of construction subscribed to in *Christo Poulos* does not persuade me that it is the best of all rules to apply in seeking to ascertain what Congress intended when it classified plates "engraved or otherwise prepared for printing."

The tariff history of the terms used suggests application of more definitive rules.

Plaintiff allows that there is a paucity of case law involving the tariff provision for plates engraved or otherwise prepared for printing. That may be so, but independent research turns up at least two cases which hold that plates, engraved or otherwise prepared for printing, include only such as in the condition imported are ready for printing, that is, require no further processing. *The Jersey City Printing Co. et al.* v. *United States*, 63 Treas. Dec. 397, T.D. 46219 (1933); *J. E. Bernard & Co., Inc.* v. *United States*, 6 Cust. Ct. 46, C.D. 422 (1941). The plates in *Jersey City* consisted of a steel sheet with a flash or very thin finish of copper on top of it and on top of the

copper a layer of chromium not more than one ten-thousandths of an inch in thickness. After importation a developing silver solution was applied to the chromium surface; the whole surface was then subjected to a photographic process, after which an applied etch ate out all space not affected by light, leaving a printing surface slightly raised. This court, commenting that the entire process was still in an experimental state, held that "the merchandise in its imported condition did not consist of 'steel plates * * * engraved or otherwise prepared for printing' within the meaning of paragraph 341 of the act of 1922." In *J. E. Bernard & Co., Inc.* (an opinion decision written by Judge Dallinger, who had written the opinion decision in the *Jersey City* case), merchandise invoiced as "45 litho zinc plates with original work for reproduction of maps" was held properly dutiable as claimed under paragraph 341 of the 1930 Tariff Act under the provision "steel plates * * * and plates of other materials, engraved or otherwise prepared for printing," or alternatively under the same paragraph as "lithographic plates of stone or other material engraved, drawn, or prepared." Replying to the defendant's citation of the *Jersey City* case in support of the contention that the plates were not prepared for printing within the meaning of the relevant tariff provision, this court stated:

> * * * We have carefully read the decision in that case [*Jersey City*] and regard it as having no application to the facts in this case. There, the merchandise consisted of certain chromium, steel, and copper plates to which certain processes had been applied after importation to render them prepared for printing. Here, no additional processes are required to be applied to the imported plates to make them ready for use in offset printing. [6 Cust. Ct. at 49.]

Jersey City and *J. E. Bernard* taken together clearly spell out this court's interpretation of the term "engraved or otherwise prepared for printing" in the 1922 and 1930 Tariff Acts. Congress first used the term in the 1922 Act, carried it over into the 1930 Act and again carried it over into TSUS item 668.38. When a given tariff term has been judicially interpreted and is thereafter reenacted in substantially the same language, the rule is that the term, when used in a later statute, will be given the same interpretation unless a legislative intent to the contrary clearly appears. *W. E. Sellers* v. *The Cronite Co., Inc.*, 45 CCPA 27, C.A.D. 668 (1957). Absent any showing of a legislative intent to the contrary, I am brought to apply the doctrine of legislative ratification of judicial construction to item 668.38 in this case.

August Bentkamp v. *United States*, 40 CCPA 70, C.A.D. 500 (1952).[9] The case of *Volkswagen of America, Inc.* v. *United States*, 68 Cust. Ct. 122, C.D. 4348, 340 F. Supp. 983 (1972); *aff'd*, *United States* v. *Volkswagen of America, Inc.*, 61 CCPA 41, C.A.D. 1115, 494 F. 2d 703 (1974), cited and referred to by plaintiff in its brief, is not applicable as that case was one in which the court discussed the inadvisability of determining legislative intent in a prior act by the use of supplemental reports not involved in the enacting of legislation and considerably later in point of time. In ascertaining legislative intent, it is also a rule of statutory construction that a general term, such as "otherwise prepared," following a specific enumeration, such as here, "engraved," is to be construed as *ejusdem generis* with the specific enumeration. The words "for printing" following the general term add an even more positive dimension to the rule. As the court of appeals has said:

> The rule of *ejusdem generis* (where particular words of description are followed by general terms, the latter refer only to things of a like class with those particularly described) is a well known rule of construction, often used by this court, to aid in arriving at the legislative intent of Congress, which, of course, is the ultimate consideration in the construction of tariff statutes. The rule is primarily designed to preserve the meaning of the particular words as well as to give to the general words an interpretation consistent with the manifest purpose of the entire act. *Overton & Co.* v. *United States*, 2 Ct. Cust. Appls. 422, T.D. 32172. The latter purpose subserves an even more fundamental purpose of giving effect, if possible, to *all* words in a statutory provision, since the legislature is not presumed to have used superfluous words. [Citing authorities.] [*United States* v. *C. J. Tower & Sons*, 44 CCPA 1, C.A.D. 626, at 5.]

Concededly, the plates in the condition imported in this case cannot be used for printing and require further processing. The imported plates are not, therefore, in the condition of the plates Congress intended to provide for under the item 668.38 provision, "plates * * * engraved or otherwise prepared for printing."

Plaintiff's motion for summary judgment is denied and defendant's cross-motion for summary judgment is granted. The action is accordingly dismissed.

Judgment will so enter.

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[9] See, *Summaries of Trade and Tariff Information*, Schedule 6, Volume 8 (1969), prepared in terms of TSUS, where in discussion of the commodity "printing plates," item 668.38, it is stated, at page 267, that:

* * * Unfinished plates or plates that have been finished but have not been engraved or otherwise prepared for printing are not covered by this summary [on printing plates] * * *.

Decisions of the United States Customs Court

Abstracts

Abstracted Protest Decisions

DEPARTMENT OF THE TREASURY, *July 18, 1977.*

The following abstracts of decisions of the United States Customs Court at New York are published for the information and guidance of officers of the customs and others concerned. Although the decisions are not of sufficient general interest to print in full, the summary herein given will be of assistance to customs officials in easily locating cases and tracing important facts.

ROBERT E. CHASEN,
Commissioner of Customs.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P77/114	Maletz, J. July 11, 1977	A. N. Deringer, Inc.	75-4-00936	Item 692.35 5.5%	Item 692.30 Free of duty	Judgment on the pleadings	Champlain-Rouses Pt. (Ogdensburg) Tree Farmer tractors (model No. C5D)
P77/115	Maletz, J. July 11, 1977	Nu-Car Driveaway, Inc.	76-3-00779	Items 807.00/ 692.02 and 945.69 25% (Canadian trailer); entered duty-free(American truck-tractor)	Item 692.27 4% (trailer) Tractor is instrument of international trade not subject to duty (19 U.S.C. 1322; 19 C.F.R. 123.16(a))	Agreed statement of facts	Detroit Automobile trailer imported from Canada, pulled by automobile tractor of American origin

				tractor)	123.16(a))		
P77/116	Maletz, J. July 11, 1977	Nu-Car Driveaway, Inc.	76-3-00834	Items 807.09/ 692.02 and 945.69 25% (Canadian trailer); entered duty-free (American truck-tractor)	Item 692.27 4% (trailer) Tractor is instrument of international trade not subject to duty (19 U.S.C. 1322; 19 C.F.R. 123.16(a))	Agreed statement of facts	Detroit Automobile trailer imported from Canada, pulled by automobile tractor of American origin
P77/117	Maletz, J. July 11, 1977	Nu-Car Driveaway, Inc.	76-8-01882	Items 806.20/ 692.02 and 945.69 25% (Canadian trailer); entered duty-free (American truck-tractor)—entry 75-927935 Items 807.00/ 692.02 and 945.69 25% (Canadian trailers); entered duty-free (American truck-tractors)—remaining entries	Item 692.27 4% (trailers) Tractors are instruments of international trade not subject to duty (19 U.S.C. 1322; 19 C.F.R. 123.16(a))	Agreed statement of facts	Detroit Automobile trailers imported from Canada pulled by automobile tractors of American origin
P77/118	Ford, J. July 12, 1977	Israeli Art Craft Import Co., Inc., et al.	75-8-01929, etc.	Item 653.37 9.5%	Item 653.35 5%	U.S. v. Morris Friedman & Co. (C.A.D.'s 1156, 1157)	Philadelphia Candlesticks, candleholders, etc.
P77/119	Ford, J. July 12, 1977	WMF of America, Inc., et al.	74-12-03326, etc.	Item 653.37 9.5%	Item 653.35 5%	Morris Friedman & Co. v. U.S. (C.D. 4570, aff'd C.A.D. 1157)	New York Brass candlesticks

Decisions of the United States Customs Court

Abstracts

Abstracted Reappraisement Decisions

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R77/60	Watson, J. July 12, 1977	Sandoz, Inc.	R65/15007, etc.	United States value	U.S. selling prices, less 1% cash discount as determined by customs officer at time of appraisement; less 25.5% representing profit and general expenses usually made in U.S. on sales of dyestuffs of same class or kind; less costs of transportation and insurance from place of shipment to place of delivery in amounts	U.S. v. Geigy Chemical Corporation et al. (C.A.D. 1155)	New York Benzenoid dyestuffs

					determined by customs officer at time of appraisement; divided by 1.40 or such other factor applied by customs officer, to allow for customs duties payable on imported dyestuffs		
R77/61	Watson, J. July 12, 1977	Sandoz, Inc.	R65/17458, etc.	United States value	U.S. selling prices, less 1% cash discount as determined by customs officer at time of appraisement; less 25.5% representing profit and general expenses usually made in U.S. on sales of dyestuffs of same class or kind; less costs of transportation and insurance from place of shipment to place of delivery in amounts determined by customs officer at time of appraisement; divided by 1.40 or such other factor applied by customs officer, to allow for customs duties payable on imported dyestuffs	U.S. v. Geigy Chemical Corporation et al. (C.A.D. 1155)	New York Benzenoid dyestuffs

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R77/62	Watson, J. July 12, 1977	Sandoz, Inc.	R65/17474, etc.	United States value	U.S. selling prices, less 1% cash discount as determined by customs officer at time of appraisement; less 24.2% representing profit and general expenses usually made in U.S. on sales of dyestuffs of same class or kind; less costs of transportation and insurance from place of shipment to place of delivery in amounts determined by customs officer at time of appraisement; divided by 1.40 or such other factor applied by customs officer, to allow for customs duties payable on imported dyestuffs	U.S. v. Geigy Chemical Corporation et al. (C.A.D. 1155)	New York Benzenoid dyestuffs

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